No. 17757

UNITED STATES

COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARTTI QUETZI RUONA,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

JUL 24 1958

Upon Appeal from the Judgment of the United States

District Court for the District of Oregon

BRIEF FOR THE APPELLEE

SIDNEY I. LEZAK
United States Attorney
District of Oregon

RICHARD C. HELGESON
Assistant United States Attorney
506 U. S. Courthouse, P.O. Box 71
Portland, Oregon 97207
Attorneys for Appellee

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COUNTER-STATEMENT OF FACTS

On Monday, October 2, 1967, defendant Martti Ruona was in San Francisco, California. He claims he had been taking "psychadelic" drugs. He was out of money, and wanted to return to his home in Seattle. He had come down to San Francisco to spend the previous weekend with two "hippie" friends named "Snoopy" and "Jimbo". He went to the Traveller's Aid Society in San Francisco and was refused a bus ticket. He was afraid to call his parents because he was on parole from a previous Dyer Act conviction. Since he was unable to obtain a bus ticket at Traveller's

Aid, he claims he decided to hitchhike home (Tr. 69-74).

Ruona claims that at midnight, Monday, October 2, 1967, he started hitchhiking from San Francisco back to Seattle (Tr. 77). At approximately the same hour, a 1965 Ford automobile belonging to Robert R. Sears was stolen from in front of a restaurant in downtown San Francisco where Mr. Sears had parked it (Tr. 44).

Fourteen hours later, at about 2:00 P.M. the next day (Tuesday, October 3, 1967), Mr. Ruona was found in the stolen 1965 Ford on a lonely dead-end mountain road 463 miles north of San Francisco (Gov. Ex. 11), some three miles off Oregon coast highway 101 just south of Bandon, Oregon (Tr. 5). The car was in the ditch and Ruona was trying to get it out (Tr. 6, 10, 22). Three local residents passed along the mountain road and saw the car. Two of them, William Hampton, a local newspaper salesman, and Bessie Waterman, a local schoolteacher, identified Ruona from the witness stand (Tr. 16, 27). William Moore, a rural resident, did not identify Ruona in the courtroom but accurately described him as a twenty-year-old blonde "pimply-faced" youth (Tr. 7-8). The trial was held on December 21, 1967, and these in-court identifications occurred about two and one-half months after the alleged crime.

Ruona spoke with the three local residents who stopped beside the stolen automobile on the mountain road. The first to come along was William Moore at about 2:00 P.M., October 3, 1967 (Tr. 5). Moore offered to help Ruona and told Ruona that he would be back in about an hour (Tr. 7). Mrs. Waterman came by about 3:00 P.M. on her way home from school. Mrs. Waterman described her conversation with Ruona as follows:

"Well, there was a man in the front seat, and I asked him if he had had trouble, and he said yes and I said, could I get help for you and he said he had no money, only traveler's checks. And I said 'Well I can't help you' and he told me that some man had come along and said that he would help him later. And I asked him if I -- if he thought that I could get around him, and he said 'Yes'." (Tr. 24)

William Hampton stopped about 3:30 P.M. and asked Ruona if he could help him. Ruona replied,

". . . that he had already sent for help and was looking for it very shortly." (Tr. 11)

A blue plaid suitcase belonging to Ruona (Gov. Ex. 6) was seen in the car by William Hampton when he stopped to help Ruona (Tr. 16, 58).

Ruona was picked up by local police on Highway 101 just north of Bandon, Oregon, about two hours after Hampton talked to him. He was driven directly to Hampton's residence and Hampton promptly identified him (Tr. 19). At the time of his arrest, Ruona had in his possession the blue plaid suitcase, the Traveller's Aid application (Ex. 5), the registration certificate for the stolen automobile which Mr. Sears, the owner, testified had been on the vehicle's steering column (Ex. 7; Tr. 55, 37). Ruona also had with him four gasoline credit card purchase receipts (Exhibits 1, 2, 3 and 4; Tr. 56-57). The automobile registration was in Ruona's blue plaid suitcase together with three of the gasoline slips (Exhibits 1, 2 and 3), which showed purchases of gasoline during the trip up the coast from San Francisco. Exhibit 1 was for a purchase of gasoline at San Francisco on October 2, 1967; Exhibit 2 was for a purchase of gasoline at Laytonville, California on October 2, 1967; and Exhibit 3 was for a purchase of gasoline at Crescent City, California on October 3, 1967. Both Laytonville and Crescent City are located on Highway 101

between San Francisco and Bandon, Oregon (Gov. Ex. 11).

The fourth gasoline slip (Ex. 4) was in Ruona's left front trouser pocket when he was arrested (Tr. 56). It was a receipt for a purchase of gasoline made by Mr. Sears, the owner of the stolen automobile, two months earlier (Tr. 39), and showed Mr. Sears' Shell Credit Card number. After his arrest, Ruona was detected trying to wad it up and throw it away (Tr. 57).

Exhibit 3 is a receipt for gasoline purchased at the Don A. Johnson Chevron Station at Crescent City, California, on October 3, 1967. This station is on Highway 101 just south of Crescent City (Tr. 77). There was a State Police safety check roadblock set up on Highway 101 on October 3, 1967 just inside Crescent City, California (Tr. 76; D. Ex. 21). Ruona was seen at this roadblock by California Highway Patrolman James Osborn (Tr. 78). Ruona himself admitted being at the roadblock at Crescent City (Tr. 69).

ARGUMENT

Defendant's first assignment of error is that the trial judge should have taken the case from the jury at the close of the Government's evidence because the eyewitness identifications of the three local residents should not have been admitted, there was an overall lack of evidence to support conviction, and the gasoline sales slips constitute additional proof in favor of defendant.

This case was tried to a jury. Defendant's trial counsel was Mr. Cheney, who is also his counsel on this appeal. Defendant's trial counsel was furnished with summaries of the testimony in advance of trial

in compliance with the rule of the Oregon District Court requiring the Government to furnish all Government's witnesses' testimony to the defendant at least 24 hours in advance of trial. Mr. Cheney was fully apprised in advance as to what the identification testimony would be and made no pretrial motion to exclude any of the identifications. Furthermore, at the trial, Mr. Cheney made no objection to the receiving in evidence of any of the identification testimony and actually cross-examined the identification witnesses personally.

Even if timely objection to the testimony had been made in advance of trial or at the trial itself, the circumstances surrounding the identifications make it clear that the testimony would have been perfectly admissible. Mr. Moore and Mr. Hampton and Mrs. Waterman are all local residents of a sparsely populated, isolated Oregon coastal community. It is not likely that they would forget a stranger with a distinctively "hippie" appearance with long blonde hair and a badly scarred face carrying a blue plaid suitcase and driving a California automobile. To these witnesses defendant's appearance on the lonely mountain dead-end road must have been a distinctively impressive apparition indeed. Although the same could perhaps not be said of a crowded urban area such as New York, Chicago or San Francisco, it is distinctly unlikely that more than one such individual would be seen in the coastal mountains of southern Oregon on any particular afternoon such as the afternoon of October 3, 1967.

The time period which elapsed from the date of the alleged crime to trial was about two and one-half months. Thus, the events were fresh in the minds of the witnesses. No effort was made by the Government to

"shore up" the recollection of the witnesses between the time of their seeing Ruona and the trial. There was no line-up and no pictures were shown to the eyewitnesses in order to affect their recollection. All three of the witnesses saw and actually conversed with Ruona.

Defendant's counsel suggests that it was improper for the local police to take Ruona back to Mr. Hampton's house after they found him on the highway. However, this was a perfectly natural thing to do in view of the isolated nature of the community and the fact that Mr. Hampton had seen and spoken to Ruona only two hours earlier. It was only when Mr. Hampton identified Ruona in the presence of the local police that he was arrested. It would have been entirely unreasonable to expect the local police authorities to make their decision on whether to hold Ruona without checking with any of the eyewitnesses who had spoken to him just two hours earlier. It is also obvious that any kind of an adequate line-up would have been impossible to arrange in that particular community.

Finally, it is clear that the identification of Ruona as the individual who was in the stolen automobile on the mountain road did not depend upon the testimony of the eyewitnesses. In addition to this testimony, there was the fact that Ruona's blue plaid suitcase was seen in the automobile and was in his possession at the time of his arrest. Furthermore, Ruona had with him the automobile registration which had been on the steering column of the stolen automobile and gasoline purchase slips bearing the license number of the stolen automobile. Ruona was able to advise the arresting officer that keys which he had in his possession did not fit the stolen automobile (Tr. 61). In addition,

the jury was presented with the inescapable fact that both the defendant and the stolen automobile travelled over the same route at the same time starting about midnight, October 2, 1967, at San Francisco and ending up some fourteen hours later in the mountains outside Bandon, Oregon. We are fully in accord with the cautionary principles expressed in United States v. Wade, 388 U.S. 218, cited by defendant (Appellant's Brief, p. 7, et seq). However, nothing in Wade would have required the trial court to exclude the eyewitness identifications under the circumstances shown in this case.

Defendant argues that there was insufficient evidence of defendant's having knowingly transported a stolen automobile in interstate commerce to take the case to the jury. Defendant's explanation of his presence in Bandon, Oregon, on October 3, 1967, was that he had hitchhiked there. He testified that he was returning to his home at Seattle, Washington (Tr. 73). However, he did not explain why he was found in an isolated mountainous area on the Oregon coast far from any direct route between San Francisco and Seattle.

The physical facts belie defendant's claim of hitchhiking. It would take approximately nine and one-half hours to travel the 463 miles between San Francisco and Bandon at an average continuous speed of 50 miles per hour. Defendant was first seen about fourteen hours after he claimed he left San Francisco. The jury could well have inferred that it was inherently improbable that a lonely individual with the appearance of a "hippie" could have such success in hitchhiking along a lonely coastal highway in the middle of the night. Furthermore, if defendant had been hitchhiking and had been let off fifteen miles south of Bandon

as he claimed (Tr. 70), he has not explained his presence three miles up into the mountains on a dead-end gravel road. It is unlikely that if he had been hitchhiking with a suitcase, he would have walked up this road, particularly inasmuch as there is a sign at the entrance to the road indicating that it is a dead-end road (Gov. Ex. 10). Defendant's claim to have been hitchhiking also leaves unexplained his possession of gasoline credit receipts for the stolen automobile and the registration of the stolen automobile. How did he come into possession of these items? Why did he have put them in his suitcase?

It is obvious from all of the evidence that Ruona stole the car on the night of October 2, 1967, in San Francisco and drove all night, arriving in Bandon, Oregon, early the following afternoon. At that point it would have been perfectly reasonable for him to turn off the highway onto a deserted road in order to get some sleep. In doing so, the automobile became disabled and Ruona abandoned it.

Defendant further argues that his possession of gasoline sales receipts shows his innocence. We are at a loss to understand the logic of this argument. It is clear that Ruona found old gasoline receipts bearing the numbers of the owner's Chevron and Shell credit cards in the car and used these numbers to buy more gasoline. His possession of them implies his guilt, not his innocence.

Defendant finally urges that the case should have been with drawn from the jury because of the "uncontradicted" testimony of Dr. Dixon that defendant could not have formed specific intent had he taken all of the drugs he testified he took prior to his being arrested.

Dr. Dixon's testimony was entirely based upon the assumption that defendant had in fact taken all of the drugs which he claimed to have taken. Defendant testified that prior to his being arrested, he had taken the following drugs:

> "A I had consumed approximately 2500 micrograms of LSD and one capsule of STP, eight Amphetamine tablets, approximately six $5 papers or bags of Amphetamine crystal, a small amount of Opium, and a little Morphine. A half a grain of Morphine.
>
> Q Do you know the strength of the Amphetamine tablets?
>
> A Anywhere between fifteen and twenty-five milligrams." (Tr. 69)

Dr. Dixon testified that the amount of drugs which Ruona claimed he had taken was

> "some ten times the average dose . . . for producing psychotic experiences in any individual . . ." (Tr. 82)

Dr. Dixon, after some hedging, testified that an individual who had taken this quantity of drugs would in effect be visually blind (Tr. 88).

Dr. Dixon testified that there have been no human volunteers to test the effect of such a dose of these "psychedelic" drugs. However, he indicated that a dose slightly above normal had been found in the only experiment known to him to have been fatal to an elephant (Tr. 88-89, 93). Dr. Dixon testified that the dosage which killed the elephant was "slightly" above what he understood to be the "normal" dose (Tr. 90-91). It was obvious to the jury from Dr. Dixon's testimony that if Ruona had actually taken all of the drugs he claimed to have taken, he would have been blind, physically disabled, and probably dead. In actual fact, Ruona had been able to travel from San Francisco to Bandon, Oregon, and had what he claimed to be a very clear recollection of the trip. He

claimed to recall that he was outside of San Francisco before twelve o'clock midnight October 2, 1967 (Tr. 72). He claimed to have recalled being with two "hippie" friends. He recalled attempting to borrow money from Traveller's Aid Society and even recalled in detail a conversation he had with the lady there (Tr. 73). He claimed that he got a ride on the other side of the Golden Gate Bridge near Mill Valley, California. He even recalled that the automobile was a 1958 Chevrolet (Tr. 70). He recalled being in Crescent City, California, on October 3, 1967, and described in detail seeing the State Police safety roadblock which had been set up there (Tr. 69). He claimed to have recalled being let off "about 15 miles south" of Bandon and claimed to have gotten a ride into Bandon with "three fishermen" (Tr. 70). He stated that he was apprehended approximately seven miles north of Bandon, Oregon (Tr.71), although he admitted that he had never been in the Bandon area previously (Tr. 74). Despite the clear recollection which he claimed to have of all of these events, he denied having any recollection of the stolen 1965 Ford (Tr. 71).

It was also clear from the testimony of the eyewitnesses that defendant was able to talk coherently, perceive the predicament which he was in, endeavor to get the car out of the ditch, and recall for Mr. Hampton and Mrs. Waterman that Mr. Moore had come by and offered to come back and help him. Mrs. Waterman observed his condition in the car and testified when asked about his condition that

"He seemed all right to me." (Tr. 26)

Ruona was in sufficient possession of his faculties to steal the automobile's registration certificate and hide it in his suitcase. He also was sufficiently aware of the trouble he was in to attempt to throw

away the gasoline credit slip which he had used to purchase gasoline on Mr. Sears' credit card number (Tr. 57). He was sufficiently aware to advise the arresting officer that keys which he had with him did not fit the stolen car (Tr. 61). It is obvious that he was aware of the meaning and use of a credit card receipt and was able to purchase gasoline using the receipt without the credit card itself. During his conversation with Mrs. Waterman he advised her that he had "no money, only credit cards"(Tr. 24). At the time of his arrest he had placed the three credit card invoices which evidenced his purchases of gasoline at San Francisco, Laytonville and Crescent City (Exhibits 1, 2 and 3) in his suitcase. However, he still had with him in his trousers' pocket the purchase receipt (Ex. 4) which had been signed by Mr. Sears two months earlier which he had been using to purchase gasoline.

It was perfectly obvious from the combined testimony of Ruona and of Dr. Dixon that Ruona could not have had the quantity of drugs which he claimed to have had. Even his purported recollection in detail of the exact quantities of these drugs belies his claim that he took them for if he had taken them, he would not have been in any condition to have such an exact recollection of the dosage. In any event, it is clear from the corroborating physical circumstances and actions of Ruona during the time of the offense that he was in sufficient possession of his faculties and aware of his surroundings and predicament to behave in a normal manner.

With the testimony in this posture, the trial judge was not required to withdraw the case from the jury. It is well established that a jury is not bound by the testimony of a defendant's doctor. They are entitled to disregard it completely if they do not believe the testimony

defendant upon which it is based. Hale v. United States (C.A. 9, 1962), F.2d 44.

CONCLUSION

The evidence clearly established that Jerome Stein stole the automobile question at San Francisco, California, on the night of October 7, 7, and drove it to Bandon, Oregon, where he was found in it and rehended.

The judgment of conviction should be affirmed.

Respectfully submitted,

SIDNEY I. LEZAK
United States Attorney
District of Oregon

RICHARD C. HELGESON
Assistant United States Attorney
Attorneys for Appellee

I certify that, in connection with the preparation of this brief, ave examined Rules 18, 19 and 39 of the United States Court of Appeals the Ninth Circuit, and that, in my opinion, the foregoing brief is full compliance with those rules.

RICHARD C. HELGESON
Assistant United States Attorney
Of Attorneys for Appellee

CERTIFICATION OF SERVICE BY MAIL

I HEREBY CERTIFY that I have made service of the foregoing Brief the Appellee on the Appellant herein by depositing in the United tes Post Office at Portland, Oregon, on July 18, 1968, two certified e, exact and full copies thereof, enclosed in an envelope with postage reon prepaid, addressed to Marshall C. Cheney, Jr., Esq., Pacific lding, Portland, Oregon 97204, attorney of record for Appellant.

RICHARD C. HELGESON
Assistant United States Attorney
Of Attorneys for Appellee